

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3838 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RANVIRSINH VAKHATSINH RANA

Versus

DIVISIONAL CONTROLLER

Appearance:

MR YN OZA for Petitioner

MR SM MAJGAOWKAR FOR MR S.N. SHELAT for respondent

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 20/12/96

ORAL JUDGEMENT

Petitioner, being aggrieved by an order passed by the Presiding Officer of the Labour Court at Baroda in Reference (L.C.V.) No. 123 of 1982 dated 14.2.1985, denying backwages, has approached this Court, by filing this petition under Article 227 of the Constitution of India.

2. Concisely stated, the facts leading to the

present application, are as under :-

2.1 Since 1970, the petitioner was discharging his duties as a Bus Conductor with the respondent S.T. Corporation. From 1.5.1979 to 31.5.1979, the petitioner remained absent without prior sanction or leave. Hence, the petitioner was charge sheeted, and after completion of the departmental inquiry, by an order dated 21.11.1980, the services of the petitioner came to be terminated.

2.2 Before the Labour Court, the petitioner's case was that a leave report for the period from 1.5.1979 to 19.5.1979 was forwarded as he wanted to be on leave on account of his Sister's marriage. Thereafter, on account of sickness, he could not join the services till 31.5.1979 and the report was sent through post. He has also come out with a case that a report was submitted to A.T.S. Shri Bhandari. His grievance was that almost one year after commencement of the inquiry, the services came to be terminated in violation of principles of natural justice. The petitioner also contended that at the initial stage of inquiry, he could not give the exact date of marriage of his sister, and, therefore, by drawing an inference that he is not telling the truth, his services were terminated, but in fact, the marriage was held on 13.5.1979 for which he has produced the marriage invitation card subsequently.

2.3 On perusal of the material placed before him, the Presiding Officer of the Labour Court observed that during the course of inquiry, the workman could not give the date of marriage, and the inquiry officer has drawn an inference that the workman has remained absent under a false pretext. The Presiding Officer has further observed that the inference was not proper as the workman may not recollect the date of marriage. The Presiding Officer has further observed that the workman might have told that after making inquiry, he will tell and it is even possible that he could not have traced the marriage invitation card, and, therefore, it is likely that in December 1979, he tried to produce the same on record, when he traced it. It appears that on behalf of the S.T. Corporation, it was pointed out that there is heavy rush in summer season. The Presiding Officer has also observed that the marriage of the sister of the workman was also in the summer season. Ultimately, the Presiding Officer held that the punishment imposed is very excessive and lesser punishment in lieu of dismissal is required to be imposed. The Presiding Officer has also observed that in the past, on two occasions, the workman

was found remaining absent without prior sanction of leave -for three days on one occasion and for ten days on another occasion. Ultimately, the Presiding Officer has observed that punishment of dismissal is excessive, and, therefore, the order of punishment should be quashed under section 11.A of the Industrial Disputes Act. However, so far as backwages is concerned, the Labour Court has observed that the petitioner is not giving the correct figure of income he had earned during the period in question. The Labour Court also held that the workman has given a reason for remaining absent for 15 days, which can be accepted, but for remaining absent for the remaining period, he has given sickness as a cause, for which he has not produced any evidence. The Presiding Officer, considering the overall facts and circumstances of the case, held that it is not a fit case wherein the employer should be ordered to pay backwages. Hence, the order of dismissal dated 21.11.1980 was quashed and set aside, and the workman was ordered to be reinstated without backwages.

2.4 The S.T. Corporation has fairly accepted the order passed by the Labour Court, and has not challenged the same. However, the workman has filed the present petition under Article 227 of the Constitution challenging the order denying him backwages.

3. If the competent authority has taken a decision considering the evidence placed on record, it cannot be said that the decision is bad. If the Labour Court has exercised jurisdiction under Section 11.A of the Industrial Disputes Act and has passed an order reinstating the workman without backwages, it would not be proper for this Court to award backwages in exercise of power of superintendence, under Article 227 of the Constitution. Under section 11.A of the Act, the Labour Court is vested with powers to give appropriate relief in case of discharge or dismissal of a workman. The High Court, under Article 227 of the Constitution does not enjoy such power, though as a superior Court, it is vested with the right of superintendence. The High Court is indisputably entitled to scrutinize the orders of the subordinate tribunals within the well accepted limitations and, therefore, it can, in appropriate cases, quash the award of a Tribunal and remit the matter to it for fresh disposal in accordance with law and directions, if any. The High Court is not entitled to exercise the powers of the Tribunal and substitute an award in place of the one made by the Tribunal as in the case of an appeal where it lies to it. Where the Tribunal has by its award directed reinstatement and withheld payment of

backwages, it would be improper for the High Court to award the same. (AIR 1984 SC 976 - JITENDRA SINGH VS. SHRI BAIDYANATH AYURVED BHAWAN LTD.). It is required to be observed that discipline demands that a workman has to act according to rules, and if he wants to remain absent, he has to take prior permission, and in case of emergency he has remained absent without prior permission, due reasons has to be shown. In the instant case, the Tribunal has observed that the workman has shown reason for remaining absent for the first 15 days but for the remaining days, the reasons given are not supported by any evidence.

4. For the reasons recorded above, this Court would not like to interfere with the order passed by the Tribunal. This petition stands dismissed. Rule discharged. No order as to costs.

csm./